

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:	§		
Frank WEHRHEIM	§		
Conf. No.: 7305	§	Group Art Unit:	3746
	§		
Appln. No.: 10/824,877	§	Examiner:	Vikansha S. Dwivedi
	§		
Filing Date: April 15, 2004	§	Attorney Docket No.:	7535-662US
	§		(RWP 1010 US)

Title: MEDICAL TUBING PUMP

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT

This is in response to the Examiner's notice dated January 23, 2008 (Paper No. 20080117). This response is being timely filed by February 25, 2008 (February 23, 2008 being a Saturday).

The Examiner contends that Applicant's response of November 1, 2007 to the Election of Species Requirement of October 1, 2007 is non responsive, because it contradicts itself in stating that all of the claims read on the embodiment of Figs. 1 and 2, although claim 4 also reads on the embodiment of Fig. 3. In other words, the Examiner argues that since Applicant admits that claim 4 refers to the second embodiment (Fig. 3), it is inconsistent for Applicant to submit that all of the claims read on the first embodiment (Figs. 1 and 2). Applicant respectfully submits that the Examiner is incorrect, and reconsideration and withdraw of the Notice of Non-Compliant Amendment are respectfully requested for the reasons set forth below.

The Election of Species Requirement dated October 1, 2007 required Applicant to elect a single disclosed species and provide a listing of all claims readable on the elected species. That is exactly what Applicant has done, and the Notice of Non-Compliant Amendment is therefore improper.

Contrary to the Examiner's contention, Applicant's admission that claim 4 reads on the embodiment of Fig. 3 is not inconsistent with all of the claims reading on the embodiment of Figs. 1 and 2. In order for a claim to read on an embodiment, it must include all of the features

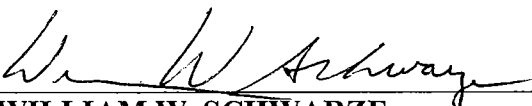
of the embodiment. As pointed out in the Traversal of Species Requirement in the Applicant's response of November 1, 2007, the "stationary protective ring (12) surrounding the entire circumference of the pump wheel (6) at the front side of the wheel," as specified in claim 1 and shown in Fig. 2, is also covered by claim 4 because claim 4 depends from claim 1. Therefore, claim 4 also "reads on" Fig. 2 because it covers or includes all of the features of Fig. 2.

The fact that Fig. 4 further includes a front plate which covers the front side of the pump wheel (6), as shown in Fig. 3, does not in any way detract from the fact that claim 4 also reads on Fig. 2, just as other claims, which add additional elements, also read on Fig. 2. The problem is not with Applicant's election of species or designation of the claims reading on the elected species, but rather with the election of species Requirement, which designates as a separate species an embodiment which merely adds an additional element to the other embodiment.

Applicant has admitted that claim 4 reads on the embodiment of Fig. 3, but that is not inconsistent with claim 4 also reading on the embodiment of Fig. 2, which has one less element. If the Examiner wishes to withdraw claim 4 from consideration pending the allowance of a generic claim, Applicant has no problem with such a withdrawal. However, Applicant has fully complied with the requirements to elect a single species and to list all claims readable thereon. Reconsideration and withdrawal of the Notice of Non-compliant Amendment are therefore respectfully requested.

Respectfully submitted,

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February 25, 2008 By: 
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